

AMENDED IN SENATE APRIL 15, 2013

**SENATE BILL**

**No. 622**

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**Introduced by Senator Monning**

February 22, 2013

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An act to add Part 14.5 (commencing with Section 32600) to Division 2 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 622, as amended, Monning. Taxation: sweetened beverage tax: Children's Health Promotion Fund.

Existing law imposes various taxes, including taxes on the privilege of engaging in certain activities. The Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges.

This bill would, on and after July 1, ~~2013~~ 2014, impose a tax on every distributor, as defined, for the privilege of distributing in this state bottled sweetened beverages, at a rate of \$0.01 per fluid ounce and for the privilege of distributing ~~concentrate~~ *concentrates* in this state, either as concentrate or as sweetened beverages derived from that concentrate, at the rate of \$0.01 per fluid ounce of sweetened beverage to be produced from concentrate. The tax would be administered by the State Board of Equalization and would be collected pursuant to the procedures set forth in the Fee Collection Procedures Law. This bill would exempt from the tax, among other things, the distribution in this state of bottled sweetened beverages or concentrate made by a distributor to another distributor registered with the board and supported by an exemption certificate that consists of a statement signed under penalty of perjury.

By expanding the definition of the existing crime of perjury and by expanding the application of the Fee Collection Procedures Law, the

violation of which is a crime, this bill imposes a state-mandated local program.

The bill would require the board to deposit all taxes, penalties, and interest collected, less refunds and administrative costs, in the Children's Health Promotion Fund, which this bill would create. This bill would require all moneys in the fund, upon appropriation by the Legislature, to be allocated to the State Department of Public Health and Superintendent of Public Instruction, as specified, for the purposes of statewide childhood obesity prevention activities and programs. This bill would also authorize the ~~Director of the State Department of Public Health~~ *State Public Health Officer* and the Superintendent of Public Instruction to make rules and regulations, and provide procedural measures, to bring into effect those purposes.

This bill would make legislative findings and declarations relating to the consumption of sweetened beverages, childhood obesity, and dental disease.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of  $\frac{2}{3}$  of the membership of each house of the Legislature.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
 2 following:  
 3 (a) The prevalence of obesity in the United States has increased  
 4 dramatically over the past 30 years. From the 1960s to the late  
 5 1970s, the prevalence was relatively constant, with about 15  
 6 percent of the population classified as obese. After the 1970s, these  
 7 rates began to climb. ~~By 2006, 23.3 percent of Americans were~~  
 8 ~~considered obese.~~ In California, obesity rates have increased even  
 9 more, rising from 8.9 percent in 1984 to ~~25.5~~ 23.8 percent in ~~2010~~  
 10 2011. Although no group has escaped the epidemic, ~~ethnic~~

1 ~~minorities and the poor~~ *low income and communities of color* are  
2 disproportionately affected.

3 (b) The rate of children who are overweight has also increased  
4 dramatically in recent decades. After being relatively constant  
5 from the 1960s to the 1970s, the prevalence of overweight children  
6 has more than quadrupled among children between 6 and 11 years  
7 of age and nearly tripled among those between 12 and 19 years of  
8 age. *In California in 2010, 38 percent of children in grades 5, 7,*  
9 *and 9 were overweight or obese. Thirty-one of California's 58*  
10 *counties experienced an increase in childhood overweight from*  
11 *2005 to 2010.*

12 (c) The obesity epidemic is of particular concern because obesity  
13 increases the risk of diabetes, heart disease, certain types of cancer,  
14 arthritis, asthma, and breathing problems. Depending on their level  
15 of obesity, from 60 percent to over 80 percent of obese adults have  
16 type 2 diabetes, high blood cholesterol, high blood pressure, or  
17 other related conditions. It has been reported that up to 60 percent  
18 of obese children 5 to 10 years of age have early signs of heart  
19 disease.

20 (d) Type 2 diabetes, previously only seen among adults, is now  
21 increasing among children. If the current obesity trends are not  
22 reversed, it is predicted that one in three children and nearly  
23 one-half of Latino and African American children born in the year  
24 2000 will develop type 2 diabetes in their lifetime. Research shows  
25 that overweight children have a much greater chance of being  
26 obese as adults, with all the health risks that entails.

27 (e) Overweight and obesity account for \$147 billion in health  
28 care costs nationally, or 9 percent of all medical spending – with  
29 half these costs paid publicly through the Medicare and Medicaid  
30 programs. *Medical costs associated with obesity are estimated at*  
31 *\$147 billion; the medical costs for people who are obese are*  
32 *dramatically higher than those of normal weight.*

33 (f) In 2006, overweight and obesity-related costs in California  
34 were estimated at almost \$21 billion.

35 (g) There is overwhelming evidence of the link between obesity  
36 and the consumption of sweetened beverages, such as soft drinks,  
37 energy drinks, sweet teas, and sports drinks. California adults who  
38 drink a soda or more per day are 27 percent more likely to be  
39 overweight or obese, regardless of income or ethnicity.

(h) According to nutritional experts, sweetened beverages, such as soft drinks, energy drinks, sweet teas, and sport drinks, offer little or no nutritional value, but massive quantities of added sugars. For example, a 20-ounce bottle of soda contains the equivalent of approximately 16 teaspoons of sugar. Yet, the American Heart Association recommends that Americans consume no more than five to nine teaspoons of sugar per day.

(i) Research shows that almost one-half of the extra calories Americans have been consuming since the 1970s could come from soda, with the average American drinking nearly 50 gallons of sweetened beverages a year, the equivalent of 39 pounds of extra sugar every year.

(j) *Though sugar sweetened beverage consumption is declining slightly as people learn about their harmful health effects, Americans are drinking more sweetened beverages than ever before. From 1977 to 2002, Americans doubled the amount of sweetened beverages they consumed. Currently, children and adult Americans consume 172 and 175 calories respectively from sweetened beverages a day, still consuming twice as much of these products as they did in the 1970's. Children and adolescents consume 173 calories per day of sugary drinks; adults consume 178 calories per day of sugary drinks. Children and adolescents now consume 10 to 15 percent of their daily caloric intake from sweetened beverages.*

(k) Research shows that 41 percent of California children 2 to 11 years of age and 62 percent of California teens 12 to 17 years of age drink soda daily, and for every additional serving of sweetened beverage that a child consumes a day, the likelihood of the child becoming obese increases by 60 percent.

(l) *Sugary drinks are a unique contributor to excess caloric consumption. A large body of research shows that calories from sugary drinks do not satisfy hunger the way calories from solid food or fat or protein-containing beverages such as those containing milk and plant-based proteins. As a result, sugary beverages tend to add to the calories people consume rather than replace them.*

(+)

(m) Dental caries (tooth decay) is the most common chronic childhood disease, experienced by more than two-thirds of California's children. Children who frequently or excessively

1 consume beverages high in sugar are at increased risk for dental  
2 caries. Untreated dental caries can lead to pain, infection, tooth  
3 loss, and in severe cases, even death. It can slow normal growth  
4 and development by restricting nutritional intake. Children who  
5 are missing teeth may have chewing problems that limit their food  
6 choices and result in nutritionally inadequate diets.

7 ~~(m)~~

8 (n) It is the intent of the Legislature, by adopting the Sweetened  
9 Beverage Tax Law and creating the Children's Health Promotion  
10 Fund, to diminish the human and economic costs of obesity and  
11 dental disease in California. This act is intended to discourage  
12 excessive consumption of sweetened beverages by increasing the  
13 price of these products and by creating a dedicated revenue source  
14 for health programs designed to prevent and treat childhood obesity  
15 and dental disease and reduce the burden of attendant health  
16 conditions.

17 SEC. 2. Part 14.5 (commencing with Section 32600) is added  
18 to Division 2 of the Revenue and Taxation Code, to read:

19  
20 PART 14.5. SWEETENED BEVERAGE TAX LAW

21  
22 32600. This part shall be known and may be cited as the  
23 Sweetened Beverage Tax Law.

24 32601. For purposes of this part:

25 (a) "Beverage container" means any closed or sealed container  
26 regardless of size or shape, including, without limitation, those  
27 made of glass, metal, paper, plastic, or any other material or  
28 combination of materials.

29 (b) "Bottled sweetened beverage" means a sweetened beverage  
30 contained in a beverage container.

31 (c) "Beverage dispensing machine" means a device that mixes  
32 concentrate with any one or more other ingredients and dispenses  
33 the resulting mixture into an open container as a ready-to-drink  
34 beverage.

35 (d) "Caloric sweetener" means any caloric substance suitable  
36 for human consumption that humans perceive as sweet and  
37 includes, without limitation, sucrose, fructose, including high  
38 fructose corn sweetener, glucose, other sugars, and fruit juice  
39 concentrates. "Caloric" means a substance that adds calories to  
40 the diet of a person who consumes that substance.

(e) “Concentrate” means a syrup, powder, or base product that is used for mixing, compounding, or making sweetened beverages in a beverage dispensing machine. For purposes of this part, “concentrate” does not include any of the following:

- (1) Any product that is solely used in preparing coffee or tea.
- (2) Any product for consumption by infants and which is commonly referred to as “infant formula.”
- (3) Any product for use for weight reduction.
- (4) ~~Any product containing milk~~ *Milk* or milk products or ~~plant~~ *protein sources*.
- (5) Any frozen concentrate or freeze-dried concentrate to which only water is added to produce a sweetened beverage containing more than ~~10~~ 50 percent natural fruit juice or more than ~~10~~ 50 percent natural vegetable juice *or more than 50 percent combined natural fruit juice and natural vegetable juice*.
- (6) Any product that is sold and is intended to be used for the purpose of an individual consumer mixing a sweetened beverage.
- (7) Medical food.
- (8) Any product to which no caloric sweeteners have been added.

(f) “Consumer” means a person who purchases a bottled sweetened beverage or concentrate for a purpose other than resale in the ordinary course of business.

(g) “Distribution” includes:

- (1) The sale of bottled sweetened beverages or concentrate to a retailer.
- (2) The receipt of untaxed bottled sweetened beverages or concentrate in this state from an unregistered out-of-state distributor by a retailer.
- (3) *The retail sale of untaxed bottled sweetened beverages, sweetened beverages, or concentrate in this state.*
- (4) *The use or consumption of untaxed bottled sweetened beverages or concentrate in this state by a distributor or retailer. For purposes of this paragraph, “use or consumption” includes the exercise of any right or power over bottled sweetened beverages or concentrate incident to the ownership thereof, except that it does not include the sale of that property or the keeping or retention thereof by a distributor or retailer for the purpose of sale.*

1 (h) “Distributor” means any person who makes a distribution  
2 of bottled sweetened beverages, sweetened beverages, or  
3 concentrate in the state, whether or not that person also sells these  
4 products to consumers.

5 (i) “Medical food” means medical food as defined in Section  
6 109971 of the Health and Safety Code.

7 (j) “Milk” means natural liquid milk, regardless of animal source  
8 or butterfat content, natural milk concentrate, whether or not  
9 reconstituted, regardless of animal source, plant source, or butterfat  
10 content, or dehydrated natural milk, whether or not reconstituted  
11 and regardless of animal source or butterfat content.

12 (k) “Natural fruit juice” means the original liquid resulting from  
13 the pressing of fruit, the liquid resulting from the reconstitution of  
14 natural fruit juice concentrate, or the liquid resulting from the  
15 restoration of water to dehydrated natural fruit juice.

16 (l) “Natural vegetable juice” means the original liquid resulting  
17 from the pressing of vegetables, the liquid resulting from the  
18 reconstitution of natural vegetable juice concentrate, or the liquid  
19 resulting from the restoration of water to dehydrated natural  
20 vegetable juice.

21 (m) “Nonalcoholic beverage” means any beverage not subject  
22 to tax under Part 14 (commencing with Section 32001).

23 (n) “Person” means an individual, trust, firm, joint stock  
24 company, business concern, business trust, receiver, trustee,  
25 syndicate, social club, fraternal organization, estate, corporation,  
26 including, but not limited to, a government corporation, partnership,  
27 limited liability company, and association or any other group or  
28 combination acting as a unit. “Person” also includes any city,  
29 county, city and county, district, commission, the state, or any  
30 department, agency, or political subdivision thereof, any interstate  
31 body, and the United States and its agencies and instrumentalities  
32 to the extent permitted by law.

33 (o) “Powder” or “base product” means a solid *or liquid* mixture  
34 of ingredients *with added caloric sweetener* used in making,  
35 mixing, or compounding sweetened beverages by mixing the  
36 powder or base product with any one or more other ingredients,  
37 including, without limitation, water, ice, syrup, simple syrup, fruits,  
38 vegetables, fruit juice, vegetable juice, or carbonation or other gas.

39 (p) “Retail sale” means the sale of ~~bottled sweetened beverages~~  
40 ~~or~~ sweetened beverages to a consumer.

(q) “Retailer” means any person who sells in this state ~~bottled~~  
~~sweetened beverages or~~ sweetened beverages to a consumer,  
whether or not that person is also a distributor as defined in this  
section.

(r) “Sale” means the transfer of title or possession for  
consideration in any manner or by any means whatever.

(s) “Simple syrup” means a mixture of sugar and water.

(t) (1) “Sweetened beverage” means any sweetened  
nonalcoholic beverage sold for human consumption that ~~contains~~  
~~any added caloric sweeteners; has caloric sweeteners and contains~~  
*more than 25 calories per 12 ounces*, including, but not limited  
to, the following: soda water, ginger ale, root beer, all beverages  
commonly referred to as cola, lime, lemon, lemon-lime, and other  
flavored beverages, including any fruit or vegetable beverage  
containing ~~10 percent or less than 50 percent~~ natural fruit juice or  
natural vegetable juice *or combined natural fruit juice and natural*  
*vegetable juice*, and all other drinks and beverages commonly  
referred to as “soda,” “soda pop,” ~~and “soft drinks.”~~ “soft drinks,”  
“sports drinks,” “energy drinks,” “juice drinks,” “ice teas,” and  
“vitamin fortified waters.”

(2) “Sweetened beverage” does not include any of the following:

(A) Any product sold in liquid form for consumption by infants,  
which is commonly referred to as ~~“infant formula.”~~ *formula*” or  
*any product whose purpose is infant rehydration.*

(B) Any product sold in liquid form for use for weight reduction.

(C) Water, to which no caloric sweeteners have been added.

(D) ~~Any product containing milk~~ *Milk* or milk products ~~or plant~~  
~~protein sources.~~

(E) Medical food.

~~(F) Coffee or tea.~~

*(F) Any sweetened beverage containing 50 percent or more of*  
*natural fruit juice or natural vegetable juice or combined natural*  
*fruit juice and natural vegetable juice.*

(u) “Syrup” means the liquid mixture of ingredients used in  
making, mixing, or compounding sweetened beverages using one  
or more other ingredients including, without limitation, water, ice,  
a powder, simple syrup, fruits, vegetables, fruit juice, vegetable  
juice, or carbonation or other gas.



1 32602. There is hereby imposed an excise tax on every  
2 distributor for the privilege of distributing bottled sweetened  
3 beverages and concentrate in the state, calculated as follows:

4 (a) The tax on bottled sweetened beverages distributed in this  
5 state shall be one cent (\$0.01) per fluid ounce.

6 (b) The tax on ~~concentrate~~ *concentrates* distributed in this state  
7 either as concentrate or as a sweetened beverage derived from that  
8 concentrate, shall be equal to one cent (\$0.01) per fluid ounce of  
9 sweetened beverage produced from that concentrate. For purposes  
10 of calculating the tax for concentrate, the volume of sweetened  
11 beverage to be produced from concentrate shall be the largest  
12 volume resulting from use of the concentrate according to any  
13 manufacturer's instructions.

14 32603. Each distributor shall include the following information  
15 on each receipt, invoice, or other form of accounting for the  
16 distribution of bottled sweetened beverages or concentrate:

17 (a) The name and address of the distributor.

18 (b) The name and address of the purchaser.

19 (c) The date of sale and invoice number.

20 (d) The kind, quantity, size, and capacity of packages of bottled  
21 sweetened beverages, sweetened beverages, or concentrate sold.

22 (e) The amount of excise taxes due to the board from the  
23 distributor on the sale of the bottled sweetened beverages or  
24 concentrate.

25 (f) Any other information as required by the board.

26 32604. There is exempt from the taxes imposed by this part  
27 the distribution of bottled sweetened beverages or concentrate  
28 distributed by a distributor to:

29 (a) A distributor registered with the board under this part when  
30 supported by a properly completed exemption certificate.

31 (b) To a person when, pursuant to the contract of sale, the bottled  
32 sweetened beverages or concentrates are required to be shipped  
33 and are shipped to a point outside of this state by the distributor  
34 by means of any of the following:

35 (1) Facilities operated by the distributor.

36 (2) Delivery by the distributor to a carrier, customs broker, or  
37 forwarding agent, whether hired by the purchaser or not, for  
38 shipment to the out-of-state point.

(c) To a person where the state is prohibited from taxing that sale, use, or consumption under the Constitution or laws of the United States or under the Constitution of this state.

32605. The exemption certificate to be provided by a distributor to another distributor as required by subdivision (a) of Section 32604 shall consist of a statement that is signed under penalty of perjury by a person with authority to bind the distributor. The certificate shall be dated and include the distributor's name and account number. A new certificate shall be given if any information in the current certificate changes. The certificate may be included as part of any business records normally used to document a sale or distribution.

32606. A distributor who has paid a tax, either directly to the state or to another distributor registered under this part, and makes a subsequent distribution of bottled sweetened beverages or concentrate may claim a credit on its return for the period in which the subsequent sale or distribution occurs.

32607. The board shall administer and collect the tax imposed by this part pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001)). For purposes of this part, the references in the Fee Collection Procedures Law to "fee" shall include the tax imposed by this part and references to "feepayer" shall include a person required to pay the tax imposed by this part.

32608. (a) The board may prescribe, adopt, and enforce regulations relating to the administration and enforcement of this part, including, but not limited to, collections, reporting, refunds, and appeals.

(b) The board may prescribe, adopt, and enforce any emergency regulations as necessary to implement this part. Any emergency regulation prescribed, adopted, or enforced pursuant to this section shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and, for purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulation is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare.

32609. The taxes imposed by this part are due and payable to the board ~~quarterly~~ on or before the last day of the month ~~next~~ *succeeding each quarterly period following each calendar quarter.*

1 32610. (a) On or before the last day of the month following  
2 each ~~quarterly period~~ *calendar quarter* of three months, a return  
3 for the preceding ~~quarterly period~~ *calendar quarter* shall be filed  
4 using electronic media with the board.

5 (b) The board may prescribe those forms and reporting  
6 requirements as are necessary to implement the tax, including, but  
7 not limited to, information regarding the total amount of bottled  
8 sweetened beverages and concentrate sold and the amount of tax  
9 due.

10 (c) Returns shall be authenticated in a form or pursuant to  
11 methods as may be prescribed by the board.

12 32610.5. Every person required to pay the tax imposed under  
13 this part shall register with the board. Every application for  
14 registration shall be made upon a form prescribed by the board  
15 and shall set forth the name under which the applicant transacts  
16 or intends to transact business, the location of his or her place or  
17 places of business, and such other information as the board may  
18 require. An application for an account shall be authenticated in a  
19 form or pursuant to methods as may be prescribed by the board.

20 32611. (a) There is hereby created a trust fund in the State  
21 Treasury called the Children's Health Promotion Fund. The  
22 Children's Health Promotion Fund shall consist of all taxes,  
23 interest, penalties, and other amounts collected pursuant to this  
24 part, less refunds and reimbursement to the board for expenses  
25 incurred in the administration and collection of the tax.

26 (b) All moneys in the Children's Health Promotion Fund shall,  
27 upon appropriation by the Legislature, be allocated for the purposes  
28 of statewide childhood obesity prevention activities and programs  
29 as follows:

30 (1) Twenty percent to the State Department of Public Health to  
31 coordinate statewide childhood obesity prevention activities and  
32 to fund state-level childhood obesity prevention and children's  
33 dental programs. This funding shall support programs that use  
34 educational, environmental, policy, and other public health  
35 approaches that achieve the following goals: improve access to  
36 and consumption of healthy, safe, and affordable foods and  
37 beverages; reduce access to and consumption of calorie-dense,  
38 nutrient-poor foods; encourage physical activity; decrease sedentary  
39 behavior; and raise awareness about the importance of nutrition  
40 and physical activity to childhood obesity prevention.

(2) Thirty-five percent for community-based childhood obesity prevention programs. This funding shall support programs that use educational, environmental, policy, and other public health approaches that achieve the following goals: improve access to and consumption of healthy, safe, and affordable foods and beverages; reduce access to and consumption of calorie-dense, nutrient-poor foods; encourage physical activity; decrease sedentary behavior; and raise awareness about the importance of nutrition and physical activity to childhood obesity prevention. The State Department of Public Health shall be responsible for the distribution of these funds to community-based organizations and to local health departments, with priority given to counties that have established childhood obesity prevention coalitions to build political support for programs *the highest rates of childhood obesity*.

(3) Ten percent to evidence-based prevention, early recognition, monitoring, and weight management intervention activities in the medical setting. The State Department of Public Health shall be responsible for identifying activities and allocating these funds.

(4) Thirty-five percent to elementary and secondary schools for educational, environmental, policy and other public health approaches that promote nutrition and physical activity. The approaches funded pursuant to this paragraph can include improving or building school recreational facilities that are used for recess and physical education; providing continuing education training for physical education teachers; hiring qualified physical education teachers; implementing Safe Routes to Schools programs; improving the quality and nutrition of school breakfasts, lunches, and snacks; ensuring free, clean drinking water access throughout the schoolday; and incorporating practical nutrition education into the curriculum. The Superintendent of Public Instruction is responsible for the allocation and distribution of these funds.

(c) All moneys in the Children's Health Promotion Fund shall be expended only for the purposes expressed in this chapter, and shall be used only to supplement existing levels of service and not to supplant current federal, state, or local funding for existing levels of service.

(d) ~~The Director of the State Department of Public Health~~ *State Public Health Officer* and the Superintendent of Public Instruction

1 are hereby authorized to make such rules and regulations, and  
2 provide such procedural measures, as shall bring into effect the  
3 purposes of this section. The rules and regulations may provide  
4 for specific programs to be funded consistent with the allocation  
5 of funds set forth above.

6 32612. This part shall become operative on July 1, ~~2013~~ 2014.

7 SEC. 3. No reimbursement is required by this act pursuant to  
8 Section 6 of Article XIII B of the California Constitution because  
9 the only costs that may be incurred by a local agency or school  
10 district will be incurred because this act creates a new crime or  
11 infraction, eliminates a crime or infraction, or changes the penalty  
12 for a crime or infraction, within the meaning of Section 17556 of  
13 the Government Code, or changes the definition of a crime within  
14 the meaning of Section 6 of Article XIII B of the California  
15 Constitution.